

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

JAMES WESLEY HERLONG,

Petitioner,

v.

MS. B. AMSBERRY, Superintendent,

Respondent.

Case No. 2:17-cv-326-SB

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Stacie F. Beckerman issued Findings and Recommendation (“F&R”) in this case on November 10, 2019. ECF 37. Judge Beckerman recommends that the Court deny Mr. Herlong’s habeas petition and decline to issue a certificate of appealability because Mr. Herlong has not made a substantial showing of the denial of a constitutional right under 28 U.S.C. § 2253(c)(2). Petitioner filed timely objections (ECF 41) to Judge Beckerman’s F&R, and Respondent timely responded (ECF 43).

Under the Federal Magistrates Act (“Act”), the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). If a party files an objection to a magistrate judge’s findings and recommendations,

“the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3). For those portions of a magistrate judge’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate judge’s findings and recommendations if objection is made, “but not otherwise”). Although in the absence of objections no review is required, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the Court review the magistrate judge’s recommendations for “clear error on the face of the record.”

The Court has reviewed de novo the Findings and Recommendation of U.S. Magistrate Judge Stacie F. Beckerman (ECF 37) and adopts the Findings and Recommendations. The Court denies the Petition and declines to issue a Certificate of Appealability on the basis that Petitioner has not made a substantial showing of the denial of a constitutional right under 28 U.S.C.

§ 2253(c)(2).

IT IS SO ORDERED.

DATED this 31st day of March, 2020.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge